

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODNEY THEODORE  
KRALOVETZ,

No. C 16-0264 WHA (PR)

**ORDER OF DISMISSAL**

Plaintiff,

v.

MARIAN E. SPEARMAN; C.  
McGRIFF,

Defendants

**INTRODUCTION**

Plaintiff, a California prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. 1983. Leave to proceed in forma pauperis is granted in a separate order. For the reasons discussed below, the case is **DISMISSED**.

**ANALYSIS**

**A. STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro

se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

## **B. LEGAL CLAIMS**

Plaintiff alleges that defendant D. McGriff, a Correctional Officer at the California Training Facility ("CTF"), where plaintiff is incarcerated, seized and confiscated his personal property despite plaintiff's being allowed to possess it. Neither the negligent nor intentional deprivation of personal property states a due process claim under § 1983 if the deprivation was random and unauthorized. *Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's hobby kit); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's property). The availability of an adequate state post-deprivation remedy, e.g. a state tort action, precludes relief because it provides adequate procedural due process. *King v. Massarweh*, 782 F.2d 825, 826 (9th Cir. 1986). California law provides an adequate post-deprivation remedy for any property deprivations. *Barnett v. Centoni*, 31 F.3d 813, 816-17

1 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895). Nor is a prisoner protected by the Fourth  
2 Amendment against the seizure, destruction or conversion of his property. *Taylor v. Knapp*,  
3 871 F.2d 803, 806 (9th Cir. 1989). Plaintiff's allegations involve an allegedly unauthorized  
4 deprivation of his personal property, the sort of claim that is not cognizable under § 1983. As a  
5 result, his claims must be dismissed.

### 6 CONCLUSION

7 For the reasons set out above, this action is **DISMISSED** without prejudice. The clerk  
8 shall close the file and enter judgment.

9 IT IS SO ORDERED.

10 Dated: January 27, 2016.



11 WILLIAM ALSUP  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**United States District Court**  
For the Northern District of California

G:\PRO-SE\WHA\CR.16\KRALOVETZ0264.DSM.wpd

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28